

Remarks/Arguments

In the final Office Action dated November 26, 2002, the Examiner rejected claims 1-18 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,082,762 to Preisler, et al. in view of the U.S. Patent No. 6,187,233 to Smith and U.S. Patent No. 5,614,146 to Nakamura, et al. By this paper Applicants' attorney amends the specification for consistency.

With respect to the Examiner's rejections, the Examiner is invited to consider the following remarks.

The presently pending application and U.S. Patent No. 6,082,762 to Preisler et al. were, at the time the invention of the presently pending application was made, owned by or subject to an obligation of assignment to, Larry J. Winget, and are now assigned to Patent Holding Company.

As such, U.S. Patent No. 6,082,762 is not a proper prior art reference and the Examiner has, therefore, failed to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

Furthermore, Applicants' attorney respectfully traverses the finality of the present rejection. "Under present practice, second, or any subsequent actions on the merits shall be final". (See, MPEP § 706.07(a)). In the present case, the application has yet to be considered on the merits of the pertinent prior art. The Examiner acknowledged that the '762 patent to Preisler was applied in the current, so-called final Office Action merely because of a technicality in Applicants' response to the previous Office Action.


Consequently, in view of the above and in the absence of better art, Applicant's attorney respectfully submits the application is in condition for allowance which allowance is

respectfully requested. In any case, the finality of the rejection should be withdrawn. A check in the amount of \$930.00 is enclosed to cover the Petition fee. Please charge any additional fees or credit any overpayments as a result of the filing of this paper to our Deposit Account . No. 02-3978 -- a duplicate of this paper is enclosed for that purpose.

The Examiner is requested to telephone the undersigned to discuss prompt resolution of any remaining issues necessary to place this case in condition for allowance.

Respectfully submitted,

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